



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173643

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Racine County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 25, 2016, at Racine, Wisconsin.

There remains no issue for determination.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. The petitioner applied for MA waiver coverage effective February 19, 2016.
3. The agency originally denied the petitioner's MA waiver application for being over the asset limit.

4. On April 12, 2016 the petitioner requested a Fair Hearing.
5. After receiving the Fair Hearing request, the agency reviewed the petitioner's case. The agency determined that they had incorrectly denied the petitioner's MA waiver application. The agency requested additional information from the petitioner. The petitioner failed to timely provide the information requested. The agency then denied the MA waiver application for not timely providing verification.
6. Although the petitioner did not timely provide the requested verification, this was in part due to agency error. They provided most of the verification, and a different agency worker told them that the verification provided was sufficient. The worker who was assigned to the case was out of the office. When the assigned worker returned, she learned that although the petitioner was misinformed, some of the requested verification was missing.
7. A hearing was held on May 25, 2016. The petitioner agreed that there was a divestment in the amount of \$55,600. The petitioner wanted the MA waiver application approved effective February 19, 2016 because that February 19, 2016 date would start the divestment penalty period.
8. The agency agreed that as of the date of the hearing they had received all of the required verification. Some of the verification was provided after the denial.
9. The petitioner reapplied for MA waiver coverage with a February 19, 2016 back date. On May 27, 2016 the agency sent the petitioner a new notice of decision stating that there was \$55,600 divestment, and the divestment penalty period will start February 19, 2016.

DISCUSSION

Family Care is a medical assistance waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stat. § 46.286; see also Wis. Admin. Code, Chapter DHS 10. Potential recipients are first tested to determine if they are functionally eligible, which usually means that they must prove they require the level of care found in a nursing home. They are then tested to determine financial eligibility. If their ability to function is sufficiently impaired and their income and assets are sufficiently low, they are certified for eligibility and then referred to a Managed Care Organizations (MCO), which drafts a service plan.

When an individual, the individual's spouse, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services and MA community waiver services including FCP. 42 U.S.C. 1396p(c)(1)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code §DHS 103.065(4)(a); MA Handbook, Appendix 17.2.1. Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is the number of days determined by dividing the value of property divested by the average daily nursing home cost to a private pay patient (\$215.48 in 2011). MA Handbook, App. 17.5. 2.2.

The only issue in this case was the divestment penalty period start date. The petitioner was able to reapply for MA waiver coverage with a requested back date of February 19, 2016. This allowed the agency to start the divestment penalty period February 19, 2016. There remains no issue for determination.

CONCLUSIONS OF LAW

There remains no issue for determination.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

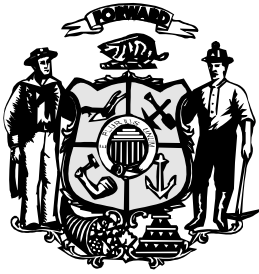
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2016.

Racine County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability
Attorney [REDACTED]